

APPEAL NO. 023198
FILED FEBRUARY 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 21, 2002. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 16th quarter and that appellant (carrier) waived the right to contest SIBs entitlement. Carrier appealed these determinations, contending that claimant did not act in good faith and that it did not waive the right to contest SIBs entitlement. Claimant responded that the Appeals Panel should affirm the hearing officer's decision.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant is entitled to SIBs for the 16th quarter. Carrier asserts that the hearing officer erred in determining that during the qualifying period claimant was enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). Carrier contends that: (1) claimant was considered "rehabilitated" by the TRC in March 2002; and (2) claimant enrolled in college classes that were to take place during the qualifying period, but when the classes were cancelled, he did not enroll in other classes or look for work. The record does not show that claimant was "rehabilitated" and that he was not enrolled in a TRC program as contemplated by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (d)(2) (Rule 130.102(d)(2)). The hearing officer could find from the evidence that, during the qualifying period, claimant was enrolled in and satisfactorily participating in a TRC retraining program even though he did not actually attend classes throughout the qualifying period. Texas Workers' Compensation Commission Appeal No. 001536, decided August 9, 2000, and Texas Workers' Compensation Commission Appeal No. 011426, decided August 8, 2001. Claimant did not have to search for work just because his classes were cancelled. Whether claimant was satisfactorily participating in the TRC retraining program hinged on whether he was performing the requirements set out by TRC in his individual plan of employment. Texas Workers' Compensation Commission Appeal No. 023229, decided February 4, 2003.

Carrier contends that it did not waive the right to contest SIBs entitlement in this case. It contends that it did request a benefit review conference (BRC) within 10 days of receiving claimant's Application for [SIBs] (TWCC-52). The hearing officer found that carrier received claimant's TWCC-52 on August 9, 2002. Carrier's request for a BRC was not received by the Texas Workers' Compensation Commission until August 21, 2002. Carrier contends that even though the facsimile transmission from claimant was actually received by carrier's facsimile machine on Friday, August 9, 2002, it should be considered to have been actually received by carrier the next business day, Monday, August 12, 2002, because the TWCC-52 was received after 4:30 p.m. on August 9,

2002, which is “after carrier’s business hours.” The hearing officer did not err in rejecting carrier’s argument in this regard and determining that carrier received the TWCC-52 on August 9, 2002.

We affirm the hearing officer’s decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **CGU INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C. J. FIELDS
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Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Roy L. Warren
Appeals Judge